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DEPARTMENT OF COMMERCE

International Trade Administration

[C-331-803]

Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and/or exporters of certain frozen warmwater shrimp (frozen shrimp) from Ecuador. For information on the estimated subsidy rates, *see* the “Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Joshua Morris and Austin Redington, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1779 and (202) 482-1664, respectively.

Background

The petitioner in this investigation is the Coalition of Gulf Shrimp Industries (Petitioner).¹ This investigation covers seven government programs. The respondents in this investigation are the Government of Ecuador (the GOE), and two companies – Promarisco S.A. (Promarisco) and Sociedad Nacional de Galapagos C.A. (Songa).

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2011, through December 31, 2011.

Case History

The events that have occurred since the Department published the *Preliminary Determination* on June 4, 2013,² are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Ecuador” (Decision Memorandum), which is hereby adopted by this notice.³

¹ The members of the Coalition of Gulf Shrimp Industries are: Bayou Shrimp Processors, Inc.; Bluewater Shrimp Company, Inc.; Carson & Co., Inc.; C.F. Gollott & Sons Seafood, Inc.; Dean Blanchard Seafood, Inc.; Dominick Seafood; Fisherman’s Reef Packing Plant; Golden Gulf Coast Pkg. Co., Inc. (and Gollott’s Oil Dock & Ice House); Graham Fisheries, Inc.; Graham Shrimp, Inc.; Gulf Crown Seafood Co., Inc.; Gulf Fish Inc.; Gulf Island Shrimp & Seafood, LLC; Gulf Pride Enterprises, Inc.; Hi-Seas of Dulac, Inc.; Indian Ridge Shrimp Co.; JBS Packing Co., Inc.; Lafitte Frozen Foods Corp.; M&M Shrimp (Biloxi Freezing and Processing); Ocean Springs Seafood Market, Inc.; Paul Piazza & Sons, Inc.; R.A. Lesso Brokerage Co., Inc.; Sea Pearl Seafood Co., Inc.; Smith and Sons Seafood; Tidelands Seafood Co., Inc.; Tommy’s Seafood; Vincent Piazza & Sons Seafood, Inc.; Wood’s Fisheries; Mariah Jade Shrimp Company, LLC; David Chauvin’s Seafood Company, LLC; and Rountree Enterprises, Inc. (dba Leonard & Sons Shrimp Co. and R&R Fisheries).

² See *Certain Frozen Warmwater Shrimp From Ecuador: Preliminary Negative Countervailing Duty Determination*, 78 FR 33347 (June 4, 2013) (*Preliminary Determination*).

³ Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Department’s Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

Scope Comments

On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.⁴ We have addressed this request and comments thereon in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, and Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp,” which is hereby adopted by this notice.

Scope of the Investigation

This investigation covers certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size. *See* Appendix I for a complete description of the scope of this investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Decision Memorandum. A list of subsidy programs and the issues that parties have raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix II. The Decision Memorandum is a public document and on file electronically via IA ACCESS. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed and the electronic versions of this memorandum are identical in content.

⁴ *See* Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – Request for Scope Clarification” (March 28, 2013).

Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we have relied on facts available and in certain instances have applied an adverse inference (AFA) in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), with regard to: (1) Provision of Commercial Concessions for Less Than Adequate Remuneration; (2) GOE Forgiveness of Land-Use Fees; (3) Preferential Loans from the National Finance Corporation and the National Development Bank; and, (4) Export Restraints on Raw and Unprocessed Shrimp. A full discussion of our decision to rely on facts available and AFA is presented in the Decision Memorandum under the section “Use of Facts Otherwise Available and Adverse Inferences.”

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated a rate for each company respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an “all others” rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

For companies not individually investigated, we have calculated an average rate as described in the Final Calculation Memoranda. *See* Memoranda to the File, “Final Determination Calculation Memorandum for Promarisco S.A.” and “Final Determination Calculation Memorandum for Sociedad Nacional de Galapagos C.A.” (Final Calculation Memoranda), which are hereby adopted by this notice.

We determine the total estimated net countervailable subsidy rates to be:

Company	Subsidy Rate
Promarisco	13.51
Songa	10.13
All Others	11.68

In accordance with section 705(c)(1)(C) of the Act, we are directing United States Customs and Border Protection (CBP) to suspend liquidation of all imports of the subject merchandise from Ecuador that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*, and to require a cash deposit for such entries of merchandise in the amounts indicated above. The suspension of liquidation will remain in effect until further notice.

We will issue a countervailing duty order if the United States International Trade Commission (ITC) issues a final affirmative injury determination and we will instruct CBP to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

August 12, 2013____
Date

APPENDIX I

Scope of the Investigation

The products covered by this investigation are certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁵ deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

⁵ “Tails” in this context means the tail fan, which includes the telson and the uropods.

The products included in the scope of this investigation are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30 and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

APPENDIX II

List of Comments and Issues in the Decision Memorandum

A. General Issues

- Comment 1** The Application of Section 771B of the Act (the Agricultural Processing Provision) to Subsidies to Fresh Shrimp Farmers
- Comment 2** The Attribution of Fresh Shrimp Subsidies to Respondent Processors; Use of a Simple or Weighted Average
- Comment 3** The Deferral of New Subsidy Allegations to Administrative Reviews
- Comment 4** The Determination Not to Investigate Value-Added Tax (VAT) Exemptions

B. Company Specific Issues

- Comment 5** Promarisco's Cross-Ownership, Sales Value, and Purchases of Fresh Shrimp
- Comment 6** Clerical Error in Calculation of Songa's Preliminary Subsidy Rate

C. Preferential, Exempted, and Forgiveness of Land-Use Fees for Shrimp Farmers

- Comment 7** Whether the GOE's Inter-Tidal Land Concessions Program is Specific
- Comment 8** The Appropriate Measure of Revenue Forgone Due to the GOE's Inter-Tidal Land Concessions Program
- Comment 9** Benchmark for Measuring the Benefit Conferred by the GOE
- Comment 10** Alleged GOE Forgiveness of Land-Use Fees
- Comment 11** Songa's Minor Corrections
- Comment 12** Promarisco's Unreported Land Concessions

D. Preferential Loans from the National Finance Corporation (CFN) and the National Development Bank (BNF)

- Comment 13** Whether to Apply AFA to Loan Discovered at Verification

E. Export Restraints on Raw, Unprocessed Shrimp

Comment 14 Whether the GOE Imposed Export Restraints on Raw and Unprocessed Shrimp

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